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BEFORE THE ARIZONA CORPORATION COMMISSION

RAYMOND R. PUGEL AND JULIE B.
PUGEL AS TRUSTEES OF THE RAYMOND
R. PUGEL AND JULIE B. PUGEL FAMILY
TRUST, and ROBERT RANDALL AND
SALLY RANDALL

Complainant,

v.

PINE WATER COMPANY,
Respondent.

DOCKET NO: W-03512A-06-0407

Arizona Corporation Commission

DOCKETED

AUG -7 2008

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ASSET TRUST MANAGEMENT, CORP.,
Complainant,

v.

PINE WATER COMPANY,
Respondent.

DOCKET NO: W-03512A-06-0613

JAMES HILL and SIOUX HILL, husband and
wife as trustees of THE HILL FAMILY TRUST,

Complainant,

v.

PINE WATER COMPANY,
Respondent.

DOCKET NO: W-03512A-07-0100

BRENT WEEKES,
Complainant,

v.

PINE WATER COMPANY,
Respondent.

DOCKET NO: W-03512A-07-0019
(Consolidated)

MOTION TO DISMISS

1 Pursuant Ariz.R.Civ.P. Rule 41(b), Respondent Pine Water Company ("PWCo" or
2 "Respondent") hereby moves to dismiss the complaints filed by Raymond R. Pugel and
3 Julie B. Pugel as Trustees of the Raymond R. Pugel and Julie B. Pugel Family Trust, and
4 Robert Randall and Sally Randall, Docket No. W-03512A-06-0407 (collectively
5 "Pugels"), and by James Hill and Sioux Hill, Docket No. W-03512A-07-0100
6 ("Hills")(collectively "Pugels" and "Hills" will be referred to herein as "Complainants").¹
7 Respondent moves to dismiss the Complaints for lack of prosecution. No meaningful
8 action is being taken to complete the prosecution of these actions. Instead, it would
9 appear that Complainants prefer to simply leave their lawsuits sit idle while other avenues
10 of attack are pursued. This motion is supported by the following Memorandum of Points
11 and Authorities.

12 MEMORANDUM OF POINTS AND AUTHORITIES

13 I. Procedural Background.

14 The following background facts are relevant to this Motion:

15 1. On June 21, 2006, Pugels filed a Complaint against PWCo with the Arizona
16 Corporation Commission, Docket No. W-03512A-06-0407.

17 2. On February 23, 2007, Hills filed a complaint against PWCo in Docket No.
18 W-03512A-07-0100. On April 3, 2007, the Hills' complaint was consolidated with the
19 Complaint by Pugel and Randall, which complaint had already been consolidated with the
20 Complaint by ATM. Later, on May 16, 2007, the Weekes' Complaint was added to the
21 consolidated docket.

22 3. The parties conducted substantial discovery over a roughly six-month period
23 in 2007, and prefiled multiple rounds of testimony. Pugels' motion in limine was heard

24 ¹ Respondent does not seek dismissal of the Complaints by Brent Weekes (Docket No. W-
25 03512A-07-0019) or ATM ((Docket No. W-03512A-06-0613) because PWCo has reached a
26 settlement agreement with those parties. Respondent notes, however, that no action has been taken
by those Complainants to seek Commission approval of those settlements.

1 and denied in July 2007, and hearings commenced on August 6, 7, 8, 9, and 10, 2007.
2 Additional hearings were held on September 27 and 28, and November 19, 2007, and then
3 again on January 10 and 11, 2008.

4 4. After all parties concluded their direct cases on January 11, 2008, Pugels
5 filed additional rebuttal testimony on January 25, 2008. The parties thereafter agreed to
6 the following courses of action: first, PWCo would submit data requests regarding Pugels'
7 additional prefiled rebuttal; second, after receiving Pugels' responses, the parties would
8 evaluate the need for further discovery, including Harry Jones' deposition; third, the
9 parties would schedule the prefiling of responsive testimony by Staff and/or PWCo to
10 Pugel's rebuttal filing; and fourth, hearing dates would be scheduled.

11 5. PWCo served its 9th and 10th sets of data requests on Pugels on February 5
12 and 11, 2008, respectively, which data requests were answered by Complainants on March
13 11 and 12, 2008. Thereafter, on March 24, 2008, PWCo served its 11th set of data
14 requests, and delineated numerous issues with the adequacy of the previous data requests
15 responses provided by Pugels.

16 6. On June 2, 2008, because no responses to data requests have been received,
17 counsel for PWCo sent an email asking Pugel's counsel to "please respond promptly and
18 explain when and in what matter" they intended to proceed. On June 16, 2008, Pugels
19 finally responded to PWCo's 11th set of data requests, but failed to address the
20 outstanding data request issues. When counsel for PWCo asked if Pugels "intend to ever
21 address the inadequacy" of their responses to the 9th and 10th set of data requests as
22 requested in the March 24, 2008 letter, Pugels' counsel replied that his "clients the
23 PSWID are beginning the appraisal of the Pine and Strawberry Water Companies. Please
24 advise as to what access Pine and Strawberry is willing to give them to the physical plant
25 and used and useful assets of these companies for purposes of inspection."
26

1 7. On June 27, 2008, Pugels provided a supplement to their 11th set of data
2 requests responses. No additional responses to data requests have been received since,
3 and the outstanding issues delineated in PWCo's March 24, 2008 letter remain ignored
4 and unresolved. No meaningful action has been taken by Pugels or its counsel to move
5 this case towards its conclusion.

6 8. Hills has taken no action to further their complaint since the most recent
7 hearings concluded on January 11, 2008.

8 **II. Complainant's Failure to Prosecute Warrants Dismissal.**

9 A.A.C. R14-2-106(K) states that motions shall conform insofar as practicable with
10 the Arizona Rules of Civil Procedure. Ariz.R.Civ.Proc. 41(b), allows a defendant to move
11 for dismissal of an action or any claim "For failure of the plaintiff to prosecute or to
12 comply with these rules or any order of court..." Rule V(e) of the Uniform Rules of
13 Practice for the Superior Court allows lower courts to place matters on the inactive
14 calendar. According to the Arizona Supreme Court, the rule "was designed to
15 standardize, among the Superior Courts in this state, the exercise of their inherent power
16 to dismiss cases for want of prosecution, and to provide a convenient administrative
17 practice which would bring to the attention of the court and the attorneys involved the fact
18 that ample time had elapsed in which to prepare a case for trial." *Campbell v. Deddens*,
19 93 Ariz. 247, 249, 379 P.2d 963, 964 (1963).

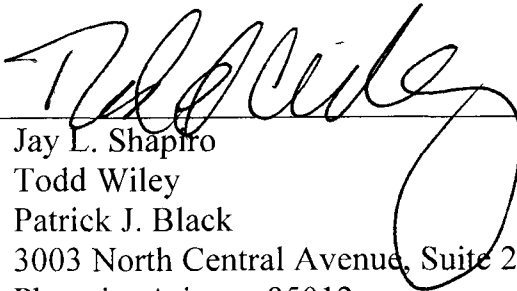
20 While the Commission does not have a similar rule governing inactive cases, there
21 is nevertheless a similar need for an allocation of resources to address matters of public
22 concern that adhere to principles of judicial economy. The Complaints represent a
23 continued burden on all interested parties' resources that, absent activity for several
24 months does not serve the public interest. As a collateral matter, by failing to address the
25 issues raised in the Complaints in a timely manner, Complainants' unresolved allegations
26 may prejudice Respondent in other proceedings before the Commission, or elsewhere in

1 the State, which may be Complainants' motivation at this time. In any event, and
2 whatever their reasons for dropping the ball, more than two years has passed since the
3 filing of the first of the many complaints. That is more than "ample" time, and as it
4 appears that Complainants have no intention of bringing these matters to conclusion, the
5 two Complaints by Pugels and Hills should be dismissed.

6 DATED this 7th day of August, 2008.

7 FENNEMORE CRAIG, P.C.

8
9 By


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13
14 ORIGINAL and nineteen (19) copies of the
15 foregoing filed this 7th day of August, 2008:

16 Docket Control
17 Arizona Corporation Commission
18 1200 W. Washington St.
Phoenix, AZ 85007

19 **Copy of the foregoing hand delivered**
20 **this 7th day of August, 2008 to:**

21 Dwight D. Nodes
22 Assistant Chief Administrative Law Judge
23 Arizona Corporation Commission
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26

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